

B-101646  
B-175155

September 6, 1979

Team Leader, CED - Raymond H. Smith, Jr.

B-101646 - B-175155

September 6, 1979

Senior Attorney, OGC - Geraldine M. Rubar

### Status of Excess Property Transferred to Amtrak

Incident to your audit of the National Railroad Passenger Corporation (Amtrak), you asked whether excess Federal property transferred to Amtrak under section 202(a) of the Federal Property and Administrative Services Act (Federal Property Act), 40 U.S.C. §483(a) (as implemented by 41 C.F.R. 101-43.3), remains Federal property subject to Federal property controls. You told us that Amtrak treats the excess property as Federal property, and reports it to the General Services Administration (GSA) when Amtrak no longer needs it. However, GSA personnel with whom you spoke, say that once transferred to Amtrak the property loses its Federal identity and Amtrak need not follow Federal property management procedures in disposing of it. We agree with GSA--Amtrak need not follow Federal procedures in disposing of excess property it receives from the Federal Government.

Section 202(a)(1) of the Federal Property Act, 40 U.S.C. §483(a)(1), directs the Administrator of GSA to "provide for the transfer of excess property among Federal agencies and to the organizations specified in section 109(f) [40 U.S.C. §756(f)]." Section 109(f) specifies, among others, mixed-ownership Government corporations. See, also, 41 C.F.R. 101-43.302. As a mixed-ownership Government corporation (see section 201 of the Government Corporation Control Act, 31 U.S.C. §856), Amtrak qualifies to receive excess property.

Since property under the control of a mixed-ownership Government corporation is not subject to Federal controls, once excess property is transferred to Amtrak it loses its Federal identity and Amtrak may use and dispose of it as it sees fit. Property controls, which are prescribed by various provisions of the Federal Property Act, apply to "executive agencies" and "Federal agencies." Specifically, section

202(b) of the Act, 40 U.S.C. §483(b), which prescribes requirements for property control, applies to "each executive agency." Mixed-ownership corporations are not included within the definition of either "executive agency" or "Federal agency". See section 3 of Federal Property Act, 40 U.S.C. §472. See, also, 41 C.F.R. 101-43.001. While the definition of executive agency does specifically include wholly owned Government corporations, it does not include mixed-ownership corporations.

Further evidence that the Congress intended that excess property transferred to mixed-ownership corporations not be subject to Federal controls is that section 202(a)(1) of the Act, 40 U.S.C. §483(a)(1), requires that they pay fair value for the property. See, also, 41 C.F.R. 101-43.315-3. Executive agencies are not required to pay for it.

The fact that the Government loses control over excess property transferred to Amtrak is further illustrated by 41 C.F.R. 101-43.304, which provides that GSA may direct the "holding agency," with its consent, to retain or transfer excess property. "Holding agency" is defined to include only executive agencies. 41 C.F.R. 101-43.001-9.

When Amtrak no longer wants excess property transferred to it (i.e., it becomes excess to Amtrak's needs), it need not follow Federal property procedures in disposing of it. Since "excess property" is defined to include only property under the control of a Federal agency, federal procedures for disposing of excess property do not apply to Amtrak. See 40 U.S.C. §472(e) and 41 C.F.R. 101-43.001-5.

cc: Mr. Eschwege, CED  
Mr. Crystal, OGC  
Index and Files

September 6, 1979

DIGEST

Excess property transferred to Amtrak (a mixed-ownership Government corporation) under the Federal Property and Administrative Services Act loses its Federal identity and is no longer subject to Federal property controls.